

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
C J) OAH No. 13-1556-SNA
) DPA Case No.

DECISION

I. Introduction

This issue in this case is whether the Division of Public Assistance (DPA or Division) gave C J legally adequate notice that his household's monthly Food Stamp benefit amount would decrease as a result of the expiration, on October 31, 2013, of certain provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). Those provisions had increased the amount of Food Stamp recipients' monthly benefit allotments for the past four to five years.

This decision concludes that the decrease in Mr. J's household's Food Stamp allotment, which became effective on November 1, 2013, resulted from a "mass change" as defined by 7 CFR § 273.12(e). As a result, 7 CFR § 273.12(e)(1)(ii) excused the Division from providing Mr. J with advance written notice ("notice of adverse action") that his household's Food Stamp benefits would decrease effective November 1, 2013. Accordingly, the Division provided legally sufficient notice of the reduction of Mr. J's household's Food Stamp benefit allotment, which became effective November 1, 2013. The Division's reduction in the amount of Mr. J's household's monthly Food Stamp benefits is therefore affirmed.

II. Facts

A. Facts Relevant to the Notice Issue

The relevant facts in this case are not in dispute. Mr. J lives with F H and T Q.¹ However, Ms. Q is not included in Mr. J's Food Stamp case, so Mr. J has a two person household for purposes of the Food Stamp program.² Both Mr. J and Ms. H are disabled.³ Mr. J receives Adult Public Assistance (APA) from the state of Alaska, and Social Security Disability Insurance (SSDI) from the Social Security Administration (SSA).⁴ Ms. H receives APA from the state of Alaska and

¹ Ex. 1.

² Ex. 1.

³ Ex. 4.

⁴ Exs 4, 4.1, 4.2.

Supplemental Security Income (SSI) from SSA.⁵ Mr. J's household has received Food Stamp benefits since October 1, 2011.⁶

The American Recovery and Reinvestment Act of 2009⁷ (ARRA), commonly referred to as the Stimulus Act or Recovery Act, was an economic stimulus package enacted by the 111th Congress in February 2009 and signed into law on February 17, 2009 by President Barack Obama. Among other things, the ARRA appropriated 20.74 billion dollars for nutrition assistance programs, including the Food Stamp program. Under the ARRA, the average household's monthly Food Stamp benefit amount increased by approximately 20% from previous levels. The ARRA did not, however, make this benefit increase permanent, and the higher Food Stamp benefit amount provided by the ARRA was scheduled to "sunset" or automatically expire on October 31, 2013.⁸

On October 15, 2013 Mr. J and Ms. H submitted a Food Stamp recertification / renewal application (eligibility review form) to the Division.⁹ On October 31, 2013 the Division notified Mr. J that his recertification application had been approved and that his household would receive \$26.00 per month in Food Stamp benefits beginning in November 2013 (i.e. the next day).¹⁰ The last two sentences of the notice stated that "[t]he Food Stamp program standards changed effective November 1, 2013" and that "[t]he decrease in your Food Stamp allotment is reflective of the new standards."¹¹

B. Relevant Procedural History

Mr. J requested a hearing regarding the reduction of his household's Food Stamp benefits on November 1, 2013.¹² Mr. J's hearing was held on December 11, 2013. Mr. J participated in the hearing by phone, represented himself, and testified on his household's behalf. Public Assistance Analyst Jeff Miller participated in the hearing by phone, represented the Division, and testified on its behalf. The record closed at the end of the hearing.

⁵ Exs. 4, 5, 5.1.

⁶ Ex. 1.

⁷ The ARRA was enacted as Public Law 111-5, 123 Statutes at Large 115-521.

⁸ See USDA Food and Nutrition Service's August 30, 2013 memorandum titled "SNAP- Fiscal Year 2014 Cost-of-Living Adjustments and ARRA Sunset - Impacts on Maximum Allotments for Alaska and Hawaii," accessed online at http://www.fns.usda.gov/sites/default/files/FY_2014_COLA_Allot_AK_HI.pdf (accessed on January 7, 2014).

⁹ Exs. 2.0 - 2.4.

¹⁰ Ex. 11.

¹¹ Ex. 11.

¹² Ex. 12.1.

III. Discussion

Mr. J made two points at hearing. First, he asserted that the Division was required to give him advance notice that the American Recovery and Reinvestment Act's Food Stamp benefit increase would end on October 31, 2013. In response, the Division argued that it was not required to provide advance written notice of the sunset of the ARRA Food Stamp benefit increase for two reasons. First, the Division asserted that the expiration of the ARRA's Food Stamp benefit increase provision constituted a "mass change" under Food Stamp program rules, and that this excused the Division from providing advance written notice of the impending decrease in benefits. Second, the Division asserted that, because the ending of the ARRA's increased Food Stamp benefit amount coincided with the end of Mr. J's household's Food Stamp certification period, and because a recertification application is treated as a new application under federal Food Stamp regulations, there was no "in-certification-period" reduction from any prior benefit level. This being the case, there was, argued the Division, no need to provide Mr. J's household with advance notice of adverse action.

Mr. J's second point is that the reduced amount of Food Stamp benefits currently provided to his household is grossly insufficient. When the ARRA's Food Stamp benefit increase provision expired, it cut Mr. J's household monthly benefit amount in half. The Division did not contest these assertions.

These two issues will be addressed separately below in the order stated above. The parties agree that there are no disputed factual issues and that the issues raised are purely legal issues.

A. The Benefit Reduction Occasioned by the Expiration of the ARRA constitutes a "Mass Change" Under Federal Food Stamp Regulations, and so the Division was not Required to Provide Advance Written Notice of the Resulting Benefit Decrease

The Food Stamp program is a federal program administered by the states. Its statutes are codified primarily at 7 USC §§ 2011 – 2029, and its regulations are codified primarily at 7 CFR §§ 271-274. The Alaska Department of Health and Social Services administers the Food Stamp program in Alaska and has promulgated its own regulations at 7 AAC 46.010 - 7 AAC 46.990.

"Mass changes" are defined, for purposes of the Food Stamp program, as "[c]ertain changes . . . initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload."¹³ These changes "include, but are not limited to, adjustments to the income eligibility standards, the shelter and dependent care deductions, the maximum food stamp

¹³ 7 CFR § 273.12(e).

allotment and the standard deduction . . . and other changes in the eligibility and benefit criteria based on legislative or regulatory changes."¹⁴

Under the federal Food Stamp regulations, different levels of notice are required for different types of mass changes.¹⁵ For mass changes due to changes in public assistance, general assistance, and/or federal benefits such as SSDI and SSI, the state agency is required to inform the household of the general nature of the change, examples of the change's effect on household allotments, the month in which the change will take effect, the household's right to a fair hearing, the household's right to continued benefits (if applicable), the circumstances under which benefits will be continued pending a hearing, general information on whom to contact for additional information, and the liability the household will incur for any over-issued benefits if the fair hearing decision is adverse.¹⁶ This information must be provided at least 10 days prior to the date on which the action caused by the mass change becomes effective.¹⁷

Mass changes involving federal adjustments to eligibility standards, allotments, and certain other matters are treated differently. For these types of mass changes, the federal Food Stamp regulations state that "[a] notice of adverse action shall not be used." Instead, the state agency is directed to publicize these mass changes through the news media, through posters in certification offices, and/or by general notices mailed to households.¹⁸

In this case, the mass change occasioned by the sunset of the ARRA's increased monthly Food Stamp allotment fell within 7 CFR § 273.12(e)(1). Under that provision, the Division was not required to provide Mr. J's household with the ten days' advance written notice normally required by Food Stamp regulations prior to adverse action. Accordingly, the Division provided legally sufficient notice to Mr. J that his household's Food Stamp benefit allotment would decrease effective November 1, 2013.¹⁹

Finally, Mr. J asserted at hearing that, regardless of the applicable regulations, due process of law required that his household be given advance notice of the decrease in its Food Stamp allotment caused by the expiration of the ARRA. Stated differently, Mr. J asserts that the Division's actions in this case violate Section 1 of the 14th Amendment to the United States Constitution,

¹⁴ 7 CFR § 273.12(e).

¹⁵ 7 CFR § 273.12(e)(1 - 4).

¹⁶ 7 CFR § 273.12(e)(2 - 4).

¹⁷ 7 CFR § 273.12(e)(2 - 4); 7 CFR § 273.13(a)(1).

¹⁸ 7 CFR § 273.12(e)(1)(ii).

¹⁹ Based on the disposition of the "mass change" issue, it is not necessary to address the Division's argument that it was not required to provide ten days' notice of adverse action because the expiration of the ARRA coincided with the beginning of a new certification period.

and/or Article I, Section 7 of the Constitution of the State of Alaska. However, the Office of Administrative Hearings, although created as an independent office, is within the State of Alaska Department of Administration, and “administrative agencies do not have jurisdiction to decide issues of constitutional law.”²⁰ Accordingly, Mr. J’s Constitutional arguments are noted for the record but cannot be addressed in this decision.

B. Does the Division Have the Authority to Disregard the Applicable Federal Regulations and Unilaterally Increase Food Stamp Benefit Amounts?

Mr. J testified that when the ARRA's Food Stamp benefit increase provision expired, it cut his household's monthly benefit amount roughly in half. He asserts that the reduced amount of Food Stamp benefits currently provided to his household is grossly insufficient.

It was not disputed that Mr. J's financial resources are limited, that his household has a significant need for Food Stamp benefits, and that the amount of his household's Food Stamp allotment is meager. However, increasing the amount of a household's Food Stamp benefits is a matter within the exclusive domain of the United States Congress. Absent new federal legislation, the Division is not at liberty to ignore the current regulations governing the Food Stamp program.²¹ Likewise, the Office of Administrative Hearings does not have the authority to create exceptions to the federal Food Stamp regulations.²² Accordingly, Mr. J’s argument regarding the insufficiency of his household's monthly Food Stamp allotment is noted for the record, but it cannot be addressed on its merits in this decision.

IV. Conclusion

The decrease in Mr. J's household's Food Stamp allotment which became effective on November 1, 2013 resulted from a "mass change" as defined by 7 CFR § 273.12(e). As a result, 7 CFR § 273.12(e)(1)(ii) excused the Division from providing Mr. J with advance written notice that his household's Food Stamp benefits would decrease effective November 1, 2013. Accordingly, the Division provided legally sufficient notice of the reduction of Mr. J's household's Food Stamp

²⁰ “Administrative agencies do not have jurisdiction to decide issues of constitutional law.” *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007). The power to adjudicate that a rule is unconstitutional is a judicial power rather than quasi-judicial and such adjudication may not be made by an administrative officer or agency. *State Department of Administration, etc. vs. State Department of Administration, etc.*, 326 So. 2d 187 (Fla. 1st D.C.A. 1976).

²¹ “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

²² See 7 AAC 49.170 (limits of the hearing authority).

benefit allotment. The Division's reduction in the amount of Mr. J's household's monthly Food Stamp benefits is therefore affirmed.

Dated this 10th day of January, 2014.

Signed _____
Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of January, 2014.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

[This document has been modified to conform to the technical standards for publication.]